

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:20-mj-00464-BNW-3

Plaintiff,

ORDER

v.

RICARDO DENSMORE,

Defendant.

I. SUMMARY

Magistrate Judge Brenda Weksler ordered Defendant Ricardo Densmore released on a personal recognizance bond as he awaits trial following a detention hearing. (ECF No. 18.) The government appealed Judge Weksler's order late on a Friday evening, and moved for a stay of his release pending the Court's resolution of the appeal. (ECF Nos. 6 (seeking stay), 12 (appealing Judge Weksler's order).) The Court granted the stay Friday night (ECF No. 7), and then held a hearing on the appeal the following Monday morning, June 8, 2020 (ECF No. 19 (the "Hearing")). Defendant filed a response over the weekend.¹ (ECF No. 11.) The Court finds that Defendant presents a flight risk, and that no conditions or combinations of conditions of release will reasonably ensure his appearance at pretrial hearings and trial. Thus, and as further explained below, the Court will order Defendant detained as he awaits trial.

II. BACKGROUND

On June 4, 2020, the United States filed a criminal complaint against Defendant and two other defendants. The complaint asserts two counts against Defendant: one

¹Defendant's response includes a motion seeking immediate release and challenging the government's authority to seek a stay of Judge Weksler's release order. (ECF No. 11 at 2, 9-10.) The Court denied that motion at the Hearing, reiterating that the Court has authority to stay Judge Weksler's release order pending its review of the government's appeal.

1 count of conspiracy to commit arson in violation of 18 U.S.C. § 844(n), and one count of
2 arson, in violation of 18 U.S.C. §§ 844(i) and 2. (ECF No. 1.) The government alleges
3 defendants set fire to a police car in Las Vegas during protests following the killing of
4 George Floyd by Minneapolis police.² (*Id.*) The government even more specifically alleges
5 that Defendant filmed his co-defendants setting fire to the police car, and then posted the
6 video to his social media account. (*Id.* at 4-5.) The government also alleges that
7 Defendant admitted to his involvement in the charged conduct, after being arrested and
8 waiving his *Miranda* rights. (*Id.* at 6.)

9 **III. DISCUSSION**

10 The Court reviews the Magistrate Judge's Order under 18 U.S.C. § 3142(e) *de*
11 *novo*. See *U.S. v. Koenig*, 912 F.2d 1190, 1192-93 (9th Cir. 1990). This standard requires
12 the district court to review the evidence presented to the magistrate judge, and any
13 additional evidence presented, to "make its own independent determination whether the
14 magistrate's findings are correct, with no deference." *Id.* at 1193.

15 The Bail Reform Act of 1984 "requires the release of a person facing trial under
16 the least restrictive condition or combination of conditions that will reasonably assure the
17 appearance of the person as required and the safety of the community." *U.S. v. Gerbo*,
18 948 F.2d 1118, 1121 (9th Cir. 1991). A court may detain a defendant if it finds that there
19 are no conditions or combination of conditions that will "reasonably assure the
20 appearance of the person as required and the safety of any other person and the
21 community." 18 U.S.C. § 3142(e). "Only in rare circumstances should release be denied,
22 and doubts regarding the propriety of release should be resolved in [the] defendant's
23 favor." *Gerbo*, 948 F.2d at 1121 (citations omitted). A finding that a defendant is a flight
24 risk must be supported by a preponderance of the evidence, *U.S. v. Aitken*, 898 F.2d 104,
25 107 (9th Cir. 1990), and that "a defendant is a danger to any other person or the
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28 ²George Floyd's killing by police officer Derek Chauvin triggered many protests all over the world, not just in Las Vegas.

1 community must be supported by ‘clear and convincing evidence,’” *U.S. Hir*, 517 F.3d
2 1081, 1086 (9th Cir. 2008) (quoting 18 U.S.C. § 3142(f)(2)(B)).

3 The charged offense of arson, 18 U.S.C. § 844(i), is among the enumerated
4 offenses carrying a presumption that no condition or combination of conditions will be
5 sufficient to permit a defendant to be released on bond, and therefore gives rise to a
6 presumption of detention.³ See 18 U.S.C. § 3142(e)(3)(C); see *also* § 2332b(g)(5)(B).
7 “Although the presumption shifts a burden of production to the defendant, the burden of
8 persuasion remains with the government.” *Hir*, 517 F.3d at 1086.

9 Where a defendant presents evidence to rebut the presumption of flight risk or
10 dangerousness, § 3142(g) requires the Court to consider available information
11 concerning the following four factors in determining whether to detain or release a
12 defendant: “(1) the nature and circumstances of the offense charged, including whether
13 the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism,
14 or involves a minor victim or a controlled substance, firearm, explosive, or destructive
15 device; (2) the weight of the evidence against the person; (3) the history and
16 characteristics of the person[. . .]; and (4) the nature and seriousness of the danger to
17 any person or the community should the person be released.” 18 U.S.C. § 3142(g); see
18 *also Hir*, 517 F.3d at 1086. However, “[t]he presumption is not erased when a defendant
19 proffers evidence to rebut it; rather the presumption ‘remains in the case as an evidentiary
20 finding militating against release, to be weighed along with other evidence relevant to
21 factors listed in § 3142(g).’” *Hir*, 517 F.3d at 1086. Because the Court is required to
22 consider all four factors in evaluating whether to detain or release Defendant pretrial, the
23 Court will address each factor in turn.

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27 ³Apparently, the government did not argue this is a presumption case before Judge
28 Weksler, but there no longer appears to be any dispute between the parties that this is a
presumption case. Moreover, the Court’s review is de novo, so there is no obstacle to the
Court considering the presumption in addition to the § 3142(g) factors now.

1 **A. Nature and Circumstances of Offense Charged**

2 The government argues this factor weighs against pretrial release because
3 Defendant is charged with a serious and dangerous crime. (ECF No. 12 at 7.) As to
4 danger, the government argues arson is a dangerous crime because Defendant and his
5 co-defendants could have harmed peaceful protestors, police officers, and other first
6 responders when they set the police car on fire. (*Id.*) Defendant, who is a young Black
7 man, responded at the Hearing that his actions must be viewed in the context of his
8 righteous indignation over the killing of George Floyd, which is just the latest example of
9 police brutality against Black men, part of a long and tortured history of systemic racial
10 oppression facilitated by the police. Thus, Defendant argues, his actions should be
11 viewed as getting caught up in the intense emotions generated by his participation in a
12 legitimate protest. And as to the government's more specific argument, Defendant
13 countered that the videos proffered by the government did not show many people around
14 the burning police car, so the offense was not as dangerous as the government makes it
15 out to be.

16 Defendant's points are generally well taken, but do not convince the Court this
17 factor weighs against release. The Court empathizes with Defendant's righteous
18 indignation over Derek Chauvin's killing of George Floyd. However, arson is nonetheless
19 a serious and dangerous crime. The Court finds the government's general argument that
20 setting a police car on fire is dangerous, and could have harmed others, persuasive even
21 though the video Defendant posted to social media of the incident did not show too many
22 people immediately around the police car. (ECF No. 13 (videos of offense conduct).)

23 Moreover, arson is a serious crime because of the penalties Congress
24 contemplates for those convicted of committing it. "Consideration of the nature of the
25 offenses charged involves consideration of the penalties." *United States v. Townsend*,
26 897 F.2d 989, 995 (9th Cir. 1990). Here, Defendant faces a mandatory minimum sentence
27 of five years, and a maximum sentence of 20 years. See 18 U.S.C. § 844(i), (n). The
28 length of Defendant's potential sentence increases the risk that he will flee because the

1 possibility of a lengthy sentence incentivizes fleeing, where a shorter potential sentence
2 might not. *See Townsend*, 897 F.2d at 995 (finding that the district court reasonably
3 determined that defendants' lengthy sentence provided them with greater incentive to
4 flee).

5 In sum, the nature and circumstances of the charged offenses weigh against
6 release.

7 **B. Weight of Evidence Against Defendant**

8 This factor "is the least important of the various factors." *United States v.*
9 *Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985). Thus, "[a]lthough the [bail reform] statute
10 permits the court to consider the nature of the offense and the evidence of guilt, the statute
11 neither requires nor permits a pretrial determination that the person is guilty." *Id.* (citations
12 omitted). "[I]f the court impermissibly makes a preliminary determination of guilt, the
13 refusal to grant release could become in substance a matter of punishment." *Id.* (citation
14 omitted). Accordingly, factor two "may be considered only in terms of the likelihood that
15 the person will fail to appear or will pose a danger to any person or to the community." *Id.*
16 (citing 18 U.S.C. § 3142(g) (remaining citation omitted)).

17 Here, as the government argues (ECF No. 12 at 7-8), the evidence against
18 Defendant is strong. He filmed his codefendants setting the police car on fire, posted the
19 video to social media on his account, and allegedly confessed to the crime after waiving
20 his *Miranda* rights. (ECF Nos. 1, 13.) However, the presumption of innocence is of
21 paramount importance in our criminal justice system. The Court therefore does not assign
22 this factor much weight in the overall analysis.

23 But this factor, while the least important, also weighs against release.

24 **C. History and Characteristics of Defendant**

25 Under 18 U.S.C. § 3142(g), courts may consider "the history and characteristics of
26 the person, including his character, physical and mental condition, family ties,
27 employment, financial resources, length of residence in the community, community ties,
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1 past conduct, history relating to drug and alcohol abuse, criminal history, [and] record
2 concerning appearance at court proceedings.” *Motamedi*, 767 F.2d at 1407. Steady
3 employment and financial resources demonstrate a tie to one’s community, and weigh in
4 favor of pretrial release. See *United States v. Honeyman*, 470 F.2d 473, 475 (9th Cir.
5 1972) (finding that the accused’s steady employment and substantial financial resources,
6 including real property, weighed in favor of pretrial release).

7 These factors weigh against release. The Revised Report⁴ indicates that
8 Defendant lacks the sort of ties that would reasonably assure his appearance at trial. To
9 start, he does not have a fixed place to live in Las Vegas. He told the pretrial services
10 officer he had been “bouncing around from place to place” at the time of his arrest.
11 Second, while he returned to Las Vegas expecting to begin working again as a security
12 guard for events (he was laid off due to the COVID-19 pandemic and travelled to Michigan
13 to stay with his biological father for a couple of months), his supervisor told the pretrial
14 services officer that Defendant did not have a job to return to due to employment-related
15 concerns. Third, the financial information Defendant submitted does not indicate he would
16 be able to support himself, especially given that he has no fixed address or job.

17 In addition, Defendant’s history of failing to appear for court proceedings weighs
18 against placing him on pretrial release. Defendant’s relatively minor offenses spanning
19 from 2014 to 2018 include one for contempt of court, and two failures to appear as to the
20 most recent, and most serious, charges.⁵ The contempt of court charge, and failures to
21 appear, weigh against finding that the Court could reasonably expect Defendant to appear

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24 ⁴Much of Defendant’s argument attacks the content of the initial pretrial services
25 report prepared on Friday, June 5, 2020. (ECF No. 11 at 3-7, 9.) However, again, the
26 Court’s review of Judge Weksler’s order is de novo. And the Court has before it a revised
pretrial services report (“Revised Report”) that was not before Judge Weksler, and which
contains more information than the initial report.

27 ⁵The earlier charge was petit larceny, and the more recent charges appear to stem
28 from one incident where he was caught driving an unregistered car without insurance or
a license.

1 for hearings and trial in this case.⁶ See *Motamedi*, 767 F.2d at 1407 (noting the
2 defendant's "record concerning appearance at court proceedings[]" is pertinent to this
3 factor).

4 Moreover, Defendant's most recent offense, from February 2019,⁷ is both serious
5 and is concerning as it relates to his proffered pretrial release plan. Specifically,
6 Defendant's first choice for pretrial release is to live with his friend Ms. Durant and her
7 young daughter. The Court finds this plan problematic. First, Defendant has only known
8 Ms. Durant for a "couple weeks." Second, it is unclear to the Court whether Ms. Durant is
9 aware of Defendant's relatively recent conviction of domestic battery with a deadly
10 weapon. Regardless, Ms. Durant told the pretrial services officer she would not be willing
11 to serve as Defendant's third-party custodian. The Court does not find this ill-considered
12 plan will reasonably assure Defendant's appearance at pretrial hearings and trial.⁸

13 All of this said, the Court understands from the Revised Report that Defendant has
14 lived in Las Vegas since he was brought here as a foster child at age six, does not have
15 a passport, and has never really traveled much outside of Las Vegas, except to stay with
16 his biological parents in Michigan. The Court therefore does not question that Defendant
17 considers Las Vegas home. The Court instead finds it problematic that Defendant lacks
18 any of the ties to Las Vegas—a current job, a stable residence, family members—that
19 would assure his appearance at pretrial hearings and trial.

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21 ⁶Especially considering that these are the most serious charges Defendant has
22 ever faced. If he failed to appear for less serious charges, he is at least arguably less
likely to appear to face the more serious charges he faces here.

23 ⁷According to the government, the charge was for "beating a female victim with an
24 aluminum pole[.]" (ECF No. 12 at 8.) Defendant does not dispute that he pled nolo
25 contendere to this charge, but noted at the Hearing through his counsel he did complete
the court ordered domestic violence counseling and 48 hours of community service.

26 ⁸Defendant also offered, as a second choice, that he could stay with his biological
27 father in Michigan. While Defendant's father indicated he would serve as Defendant's
28 third-party custodian, this option was not explored by the parties in any depth. Should it
later be determined that Defendant's father may act as a third party-custodian and assist
Defendant to periodically return to Las Vegas for court proceedings, Defendant may have
a basis to seek to reopen detention.

1 This factor—the history and characteristics of the defendant—thus also weighs
2 strongly against release.

3 **D. Nature and Seriousness of Danger to any Person or the Community**
4 **that would be Posed by Defendant's Release**

5 The government argues this factor also weighs against release because the
6 charged conduct reflected the culmination of an escalating series of events that
7 Defendant captured on video, and uploaded to social media after the fact, indicating that
8 Defendant was not ‘caught up in the moment’ or felt remorse for his actions. (ECF No. 12
9 at 10.) Specifically, the social media posts and videos that Defendant uploaded first
10 showed him and his codefendants standing on top of a police car, then smashing out the
11 windows and windshield of a police car with a bat or pole, then going to get gasoline, then
12 returning to light a police car on fire. (*Id.*; see also ECF No. 13.) The government also
13 mentioned at the Hearing the risk that Defendant may engage in similar conduct at future
14 protests likely to occur after he was released. In gist, Defendant responded at the Hearing
15 that, despite the timeframe, he was merely caught up in the moment, he felt remorse for
16 what he had done, as evidenced by his confession, and the government’s proffered
17 concern about future protests is speculative.

18 The Court finds this factor neutral because the parties’ arguments largely balance
19 each other out. On the one hand, the Court agrees with the government that lighting the
20 police car on fire reflected escalating conduct, and taking the time to post videos of the
21 conduct on social media after the fact suggests that Defendant did not feel remorse for
22 the charged conduct. On the other hand, the Court agrees with Defendant that the risk of
23 Defendant engaging in similar conduct at future protests is speculative, because he has
24 not committed similar conduct in the past, and the risk of future similar conduct depends
25 on future protests occurring, and Defendant deciding to help light more police cars on fire
26 (or engage in other potentially criminal conduct) even while he faces federal arson
27 charges in this case. However, the Court finding this factor neutral does not affect the
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1 Court's overall analysis too much because the other three factors weigh in favor of pretrial
2 detention.

3 **E. Weighing the Bail Reform Act Factors**

4 In sum, the Bail Reform Act factors, 18 U.S.C. § 3142(g), favor detention.⁹ First,
5 the factors discussed above tip the scales against pretrial release. Second, so does the
6 presumption that applies in this case. See *Hir*, 517 F.3d at 1086. And the Court does not
7 find Defendant has come forward with any persuasive evidence to rebut the presumption
8 of pretrial detention that applies here. In sum, the Court finds that there are no conditions
9 or combination of conditions that will reasonably assure Defendant's appearance as
10 required. The Court will order Defendant detained as he awaits trial.

11 **IV. CONCLUSION**

12 The Court notes the parties made several arguments and cited to several cases
13 not discussed above. The Court has reviewed these arguments and cases and
14 determines that they do not warrant discussion as they do not affect the outcome of the
15 issues before the Court.

16 It is further ordered that the government's motion for review of Magistrate Judge
17 Brenda Weksler's order releasing Defendant Densmore (ECF No. 12) is granted.

18 It is further ordered that Magistrate Judge Brenda Weksler's order releasing
19 Defendant Densmore as he awaits trial (ECF No. 18) is vacated.

20 It is further ordered that Defendant Densmore be detained pending trial.

21 DATED THIS 9th day of June 2020.



24 MIRANDA M. DU
25 CHIEF UNITED STATES DISTRICT JUDGE

27 _____
28 ⁹While the Court decided not to detain Defendant's co-defendant Walker (ECF No. 19), whether to detain a defendant involves an individualized inquiry of the relevant factors under 18 U.S.C. § 3142(g).